

**Notice of Submission of Answer Brief to Petition
For Writ of Certiorari**

**SAMUEL O. TANNAHILL,
ROBERT D. LEEPER,
JAMES E. BABB,**
Counsel for
SAM'L D. WHITE, Trustee
in the above entitled matter:

Please take notice that upon the submission to the supreme court of your petition for writ of certiorari, we shall submit the annexed Answer Brief for consideration by the court.

Dated at Olympia, Washington, January 12, 1923.

HARVE H. PHIPPS,
Attorney and Counsel for Respondent.

Service of foregoing notice and annexed Answer Brief is hereby admitted this.....day of January, 1923.

.....
*Attorneys for Petitioner,
Sam'l D. White, Trustee.*

PROOF OF MAILING ANSWER BRIEF.

STATE OF WASHINGTON, }
COUNTY OF THURSTON. } ss.

The undersigned, being first duly sworn, deposes and says: That on January 12, 1923, at Olympia, Washington, I deposited in the United States Post-office, in a sealed envelope addressed to Samuel O. Tannahill, Robert D. Leeper, and James E. Babb, Lewiston, Idaho, a true copy of the answer in this case, postage fully prepaid thereon.

ALBERT H. SUNDAHL.

Subscribed and sworn to before me this 12th day of January, 1923.

FRED W. AGATZ,
Notary Public in and for the State
of Washington, residing at Olympia.

**BRIEF IN ANSWER TO PETITION FOR
WRIT OF CERTIORARI POINTS
AND AUTHORITIES.**

The history of this case is substantially stated in the opinion of the United States Circuit Court of Appeals for the 9th Circuit, which opinion is found on pages 65 to 73, inclusive of the transcript of record in this case.

Many phases of the Federal Bankruptcy law, and Homestead Laws of the State of Idaho have been ably discussed in the petitioner's brief for writ of certiorari in this case; however, there is but one main question involved and we will confine our argument in so far as possible to that question.

The main question is, did Veta Stump, the wife of the bankrupt, have the right to claim a homestead under the laws of the State of Idaho by seasonably filing the proper declaration of homestead after her husband had filed his petition in bankruptcy; or did the filing of the petition in bankruptcy by her husband work an attachment of her property and subject it to the claim of creditors to the prejudice of her homestead exemptions.

It is true that, when one files his petition in bankruptcy, the arm of the law surrounds his property and stays the hand of all creditors until the bankruptcy court can administer the bankruptcy estate. This arm of the law we speak of as warding off the

hands of impatient creditors also serves another very important function—it forms a circle of protection around the wife and children of the bankrupt, so they cannot be turned out of house and home and left stranded without even a roof over their heads.

The petitioner's assignment of error is in the following language: "Your petitioner assigns as error the entering of judgment by the Circuit Court of Appeals of the Ninth Circuit in the instant case wherein the decision of the District Court of the United States for the District of Idaho was sustained, such judgment being found at Pages 73-74 of the transcript."

The argument of the petitioner is based on various sections of the Revised Statutes of Idaho governing homestead exemptions quoted on Page 4 of the transcript of record, and on Sections 70a and 47a, Clause 2 of the Bankruptcy Act of 1898.

The sections of the Idaho statute quoted in petitioner's brief were apparently borrowed from the Code of California; and these sections, as well as sections 70a and 47a, Clause 2 of the Bankruptcy Act of 1898, were quoted in the decision of the Circuit Court of Appeals for the Ninth Circuit in the case of *Brandt v. Mayhew*, 134 cca, 210 (9th Circuit) 218, Federal 422, the decision on which the Circuit Court based its opinion as it was duty bound to do, in view of the fact that the law and facts were identical with

the instant case, and in the *Brandt v. Mayhew* case the court held:

"The bankrupt is not precluded from claiming a homestead exemption from the operations of the bankruptcy law merely because prior to the adjudication he had failed to designate a homestead under the laws of the state, provided, that after claiming it, he proceeded under the said law, to perfect his right within a reasonable time." (218 Federal 425.)

In the case of *White v. Stump*, the decision rendered by the Circuit Court of appeals for the 9th Circuit October 30, 1922, that court rightly held as follows:

First. That the time and manner of claiming, selecting and allowing exemptions are wholly within the jurisdiction and control of the bankruptcy court.

Second. That claims for exemptions contained in the voluntary bankrupt schedule under the bankruptcy act, Section 7a, cl. 8 (Comp. St. Clause 9591), may be amended, if seasonably done, or, if by oversight, the claim for homestead is omitted from the schedule, it may be amended on timely application.

Third. The status of a trustee in bankruptcy as a creditor having a lien from the time of the filing of the petition under Bankruptcy Act, 47a, cl. 2 (Comp. St. 9631), does not affect the right of the bankrupt's wife to file thereafter a declaration of homestead as permitted by the state laws (Comp. St. Idaho, 1919, 5441, 5462-5464), in view of the Bankruptcy Act, 6 (Comp. St. 9590) though under

Comp. St. Idaho 1919, 5437, the homestead is subject to forced sale in satisfaction of judgments obtained before the filing of the declaration or obtained in an action in which an attachment was levied before such filing.

Fourth. Though the filing of a voluntary petition in bankruptcy deprived creditors of their right to proceed against the bankrupt's property by levy of attachment or other mode of acquiring an involuntary lien, the bankrupt and his privies are not thereafter estopped to claim a homestead from the assets. (*White v. Stump* advance sheets, The Federal Reporter, dated December 28, 1922, Page 199.)

Wherefore the facts being undisputed, the law clearly and rightly settled, and the petition for writ of certiorari being without merit, we ask that this Honorable Court adopt the reasoning of the Circuit Court of Appeals for the Ninth Circuit and that the petition for certiorari be rejected and dismissed upon the authority of *Brandt v. Mayhew* and *White v. Stump*, above quoted.

Respectfully submitted,

✓ HARVE H. PHIPPS,
Attorney for Respondent.

